

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRANCIS WANJIRU,
Petitioner,

v.

CIVIL ACTION

NO. 04-10030-EFH

STEVEN FARGUHRSON, et al.,
Respondents.

O R D E R

On December 29, 2003, petitioner Francis Wanjiru, an immigration detainee currently confined at Plymouth County Correctional Facility, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, but did not submit the \$5 filing fee or an application to waive the filing fee.

ACCORDINGLY,

(1) The Clerk shall correct the case caption to reflect that the only respondent to this action is Joseph McDonough, the Sheriff of Plymouth County. A writ of habeas corpus must be "directed to the person having custody of the person detained." 28 U.S.C. § 2243. Petitioner's legal custodian is the sheriff of Plymouth County, the individual having day-to-day control over the facility in which petitioner is being detained. Vasquez v. Reno, 233 F.3d 688, 694 (1st Cir. 2000), cert. denied, sub nom. Vasquez v. Ashcroft, 122 S. Ct. 43 (2001); see Mass. Gen. Laws ch. 126 § 16 (sheriff shall have custody and control of the jails in his county.. .and shall be responsible for them);

(2) Petitioner is directed to either pay the \$5 filing fee or submit an application to proceed without prepayment of fees within 28 days of receiving this order;

(3) The Clerk of this Court shall serve a copy of the Petition, by certified mail, upon (i) Sheriff Joseph F. McDonough, Plymouth County Correctional Facility, 26 Long Pond Road, Plymouth, MA 02360; (ii) the United States Attorney; AND (iii) Frank Crowley, Department of Homeland Security, Special Assistant United States Attorney, P.O. Box

8728, JFK Station, Boston, MA 02114 AND

(4) The Clerk shall send petitioner a copy of the application to proceed without prepayment of fees;

(5) The Respondent shall, within 28 days of receipt of this Order, file an answer or other responsive pleading AND

(6) The Respondent shall provide the Court with at least 48 hours advance notice of any scheduled deportation or removal of petitioner.

SO ORDERED.

1-20-04
Date

Edward F. Harrington
United States District Judge

(2241serv\INS.wpd - 09/00)

[2241serv.]